Exam Code: ________________
Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2016

LAW 460
Advanced Corporate Law - Advising Public Companies

Section 1
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TOTAL MARKS: 100
TIME ALLOWED: 2.5 HOURS

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NOTE: 1. This is a limited open book examination, and, in addition to the materials provided herein, candidates may refer to their class notes and course materials, other than the course text book. TEXT BOOKS MAY NOT BE BROUGHT TO OR UTILIZED DURING THE EXAM.

2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 6 QUESTIONS (1(a) and (b), 2(a) and (b) and 3(a) and (b))
QUESTION 1 – 35 Marks

Glossary

**ABC Co** A Canadian publicly traded company whose shares are listed on the Toronto Stock Exchange. It has 50,000,000 common shares outstanding.

**Board** The Board of Directors of ABC Co, comprised of seven individuals, being the Chairman, CEO, CFO, the CEO’s brother-in-law plus three other independent directors.

**CEO** Chief Executive Officer of ABC Co who is also a director. He personally owns 4,850,000 common shares of ABC Co.

**CFO** Chief Financial Officer of ABC Co who is also a director.

**Chairman** Independent Chairman of ABC Co.

**Family** The family of the CEO which includes his wife and two children ages 14 and 12.

**Panama Papers** The recently leaked secret documents from the Panamanian law firm, Mossack Fonsecca, regarding its setting up 240,000 shell companies in low or no tax jurisdictions on behalf of numerous parties around the world which have been leaked to the press, including the International Journalists' Association.

**ShellCo** A company organized under the laws of the British Virgin Islands.

Background

You act as counsel for ABC Co from time to time. You receive a call from the Chairman who is very nervous and distressed. He says he has been advised that the Panama Papers will disclose that the CEO and/or his Family are the beneficial owners of ShellCo. He says this is very concerning, given the negative world-wide press regarding individuals named in the Panama Papers and their potential involvement with either evading tax, laundering monies or other things. He says he understands that owning a foreign company in and of itself is not illegal. He notes the president of Iceland has resigned and other politicians are being investigated after being named in the Panama Papers. He also advised that he has been told by the CFO that ABC Co has done business with ShellCo where ShellCo sources and sells raw materials to ABC Co that ABC Co uses in the manufacture of its products. He also says the CEO is one of the best executives in the business and instrumental in driving above-market returns for ABC Co and its shareholders.

Question 1- Part (a)

The Chairman says he needs your advice as to what the Board and ABC Co should be doing, what are the directors' duties, what actions should they be taking and what might happen to ABC Co, the CEO and the Board.
Question 1- Part (b)

Two weeks later, the Globe and Mail newspaper in its review of the Panama Papers picks up the CEO's and the Family's involvement in ShellCo. The newspaper discloses that ShellCo owned and traded in shares of ABC Co. The paper says it could be several hundred thousands of shares of ABC Co or more. The Chairman tells you, to his knowledge, there has never been any disclosure of the CEO owning and trading shares of ABC Co through ShellCo.

He asks you: "What does this mean for the directors, ABC Co and the CEO?". He wonders what ABC Co, the Board and the CEO should be doing in light of this new disclosure? He very nervously asks: "What are the ramifications?".

QUESTION 2 – 25 Marks

Question 2 – Part (a)

You are a lawyer working in Vancouver and you receive a call from an old university friend, Steve Gates. He advises that, after university, he and his friend, Steve Allen, have been working on a new software platform for the last couple of years. He says he is very excited about it and believes it could be a big success. He says he and his friend are currently working out of his parent's garage but have reached a stage where they need to spend more money to hire people to help them write code, do research, explore further algorithms and otherwise expand. He says they could get by with raising about $100,000, but it would be best if they could raise up to $750,000. He says his dad has some business associates who have money, including through companies, who may be interested but he has never met them before. He asks you what are the rules about raising money, what can he do and what he cannot do and how he should go forward. He says he has never done anything like this before and needs your advice.

Question 2 – Part (b)

Two years later, Steve Gates calls you again and says his start-up software company has been doing very well. It has had tremendous growth and he thinks the company will be very profitable over time. In order to keep growing the business at a rapid pace, he says they need to raise a lot more money. He thinks they need to raise somewhere in the order of $30 million to $40 million. He says he has been reading newspapers, like the Wall Street Journal, and he sees how in the United States companies raise a lot of money by "going public".

He tells you that he has made a reasonable amount of money lately and some of his dad's business associates, who have already bought shares and have a fair bit of money, would be willing to be directors of his company but are worried about liabilities. He also tells you his company uses some new and different marketing and business generation methods that he does not really want to tell other people about because he is worried that this might assist his competitors. He says it is not anything that is subject to a patent or anything like that, it is just that "we do things differently and better than
others". He then tells you that, while things are going extremely well, he understands through his industry contacts that there is another company in China that is developing something similar to his software and he is concerned that this company can price their product a lot cheaper. Plus, he always worries about software "piracy" in China and other similar places. He is also worried that, given the huge amount of talent and funding in Silicon Valley, a competitor there may be able to advance a similar project quicker and take it to the next module and stage faster than his company can. He says these things are not really imminent but they could happen in the foreseeable future, although he does not want to talk about this stuff as it may seem negative.

He says he wants to stay in Canada and asks your advice on what he can do, how his company can go public, who and what is involved, what the process is, what must be disclosed, what liabilities there might be, how to best avoid potential liabilities and to generally advise him about the process.

QUESTION 3 – 40 Marks

Glossary

AAA Co. A Canadian publicly traded mining company whose shares are listed on the Toronto Stock Exchange (the "TSX") and is incorporated under the British Columbia Business Corporations Act. AAA Co. has only one class of shares outstanding.

Board The Board of Directors of ABC Co., comprised of seven individuals:

- Director A – Chairman of the Board and a non-employee director who was the past executive of a large international mining company (also referred to as "Chairman").

- Director B – CEO of AAA Co.

- Director C – Non-Employee director, who was previously the head of mining finance at a large Canadian investment bank.

- Director D – Non-employee director with past broad business experience.

- Director E – Non-employee director, who is also an executive of the Fund.

- Director F – Non-employee director, who was previously an executive at a large manufacturing company.

- Director G – Non-employee director, who is also the chief executive officer of a mining consulting firm that has previously provided substantial services to Giant Mining.
CEO
Chief Executive Officer of AAA Co.

Fund
A large hedge fund, which is the largest shareholder of AAA Co., owning approximately 12% of the AAA Co. shares.

Giant Mining
A publicly traded mining company listed on the TSX. Giant Mining is one of the largest mining companies globally and is 35% owned by a large Chinese commodities trading company.

LAM Mining
Latin America Mining Corp., a mid-tier gold producer based in Peru.

Background

• AAA Co. has been a successful mining growth story. Since its creation 10 years ago, it has developed several producing mines and several advanced-stage non-producing projects. One of its non-producing projects, the AAA Mine, located in Chile and Peru is generally regarded by AAA Co. and the mining industry to have the potential to be one of the largest and most cost efficient mines in the world. AAA Co.'s producing assets include several mines located in Peru and Chile, including the Santana Mine, located in Peru, which currently represents about 35% of AAA Co. gold production, revenues and net income.

• In order to put the AAA Mine into production as envisioned, AAA Co. will need to invest an additional $1.5 billion. It is currently estimated by AAA Co. that, with funding in place, AAA Co. could advance the mine into production within four years. Many analysts believe that if the AAA Mine is successfully developed, AAA Co. would become one of the top-three gold producers in the world, with a lower cost of production than any of its competitors.

• AAA Co. previously planned to fund the development of the AAA Mine with the profits from its producing mines. However, due to the recent downturn in gold prices, the profitability of these mines is currently negligible.

• AAA Co. currently has $50 million in cash, which, at current gold prices, is sufficient to maintain its existing producing mines and cover its expenses for the next four years.

• The AAA Co. shares are currently trading at $20 per share. Over the past three years the AAA Co. shares traded as high as $60 per share until they sharply decreased over the last year as a result of a significant decrease in the price of gold and other metals.

• The Fund makes most of its investments in mining companies, providing debt and equity financing to companies like AAA Co. with promising project portfolios.

• Giant Mining was established over 50 years ago and has grown into one of the most successful mining companies in the world, with over twenty-five mines in production, all of which are located in North America and Africa. Giant Mining has several gold mines but its focus to date has been predominantly on copper projects. Giant Mining's largest shareholder is a private
Chinese metals trading company, which owns approximately 40% of Giant Mining's shares. Several months ago, Giant Mining announced that it would be seeking to expand its gold mine portfolio and diversify its geographic focus outside of North America and Africa.

- Yesterday, Giant Mining’s Chief Executive Officer and several of its other executives met with the CEO and Chairman. During this meeting, they suggested a transaction, whereby Giant Mining would acquire AAA Co. for a combination of cash and Giant Mining shares equivalent to $25 per share. At the meeting, they stated that they would prefer a friendly deal, but would be more than willing to make a hostile bid for AAA Co. Based on the Giant Mining proposal, the shareholders of AAA Co. would own about 14% of Giant Mining if the proposed transaction is completed.

- Director E mentioned to Chairman that Giant Mining had approached the Fund seeking to buy its AAA Co. shares at current market prices. However, the Fund does not wish to sell its shares to Giant Mining at this stage because it believes AAA Co. is undervalued and thinks that the shares will appreciate significantly once the AAA Mine is developed.

**Question 3 – Part (a)**

You are a lawyer working in Vancouver and you receive a call from the Chairman, who asks you for advice regarding what AAA Co. and the Board should do in response to Giant Mining's overtures. He also wants you to address the duties and obligations of the Board. He states that he has canvassed the other Board members and a majority of them believe that the Giant Mining offer significantly undervalues the shares of AAA Co.

**Question 3 – Part (b)**

Two weeks has passed since the meeting between the CEO, the Chairman and the representatives of Giant Mining. Today, Giant Mining commenced a take-over bid for all of the AAA Co. shares for a combination of cash and shares at a price of $30.00 per share. If this bid is successful, AAA Co.'s existing shareholders would collectively own approximately 18% of Giant Mining on a post-transaction basis. In its take-over bid circular, Giant Mining states that it does not currently own any AAA Co. shares, but that it has entered into "hard" lock-up agreements with shareholders of AAA Co. representing 9% of the outstanding AAA Co. shares, whereby such shareholders have agreed to tender their shares to Giant Mining's bid.

The Chairman contacts you again informing you of the situation. He also provides that:

- Over the past week, he has been in touch with representatives of the Fund, who have stated that the Fund would be willing to tender to the current Giant Mining offer at $30.00 per share. The Fund was approached by Giant Mining to enter into a lock-up agreement, but it was unwilling to commit to the "hard" lock-up required by Giant Mining.
• He has been in touch with AAA Co.'s lawyers in South America who have advised that the Giant Mining offer will likely trigger a 5-month regulatory approval process based on local foreign investment laws that require government review and approval due to the large ownership position in Giant Mining held by the Chinese metal trading company. This is also disclosed in Giant Mining's take-over bid circular.

• Earlier today, the Board also received a non-binding term sheet from LAM Mining indicating an interest to acquire AAA Co.'s Santana Mine for cash consideration of $350 million. LAM Mining is a mid-tier gold producer, with sufficient cash on its balance sheet to complete this proposed transaction. It has completed extensive due diligence in the past on the Santana Mine. Some of the Board members have expressed an interest in pursuing this deal as it would position the Company well to develop the AAA Mine, covering development costs for the next 12 months. Director E has stated that the Fund would be opposed to this deal because, from their investment perspective, the Fund wants exposure to the combined project portfolio of AAA Co. and Giant Mining.

The Chairman calls you and asks you to advise as to how they should proceed and expressed that some of the directors are concerned about going against the will of the largest shareholder. He also asks you what measures they could put in place to add certainty to a transaction with LAM Mining (if approved by the Board).

END OF EXAMINATION